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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 27

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE, PETITIONER

vs.

PAUL R. G. HORST

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 2, 1940

CERTIORARI GRANTED APRIL 8, 1940

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Before United States Board of Tax Appeals

Docket No. 90819

PAUL R. G. HORST, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances: For Taxpayer: Harry H. Wiggins, Esq. For Commissioner: J. R. Johnston, Esq.

Docket entries

1937

- Sept. 24—Petition received and filed. Taxpayer notified (Fee paid).
- Sept. 24—Copy of petition served on General Counsel.
- Nov. 12—Answer filed by General Counsel.
- Nov. 16—Copy of answer served on taxpayer.
- Nov. 20—Motion for circuit hearing at New York, N. Y., filed by taxpayer. 11/22/37 granted.

1938

- Nov. 16—Hearing set Jan. 9, 1939, in New York City.

1939

- Jan. 9—Hearing had before Mr. Hill, Div. 2, on the merits. Submitted. Consolidated for hearing with Docket 93220. Stipulations of facts filed at hearing. Briefs due in 30 days, simultaneously.
- Jan. 23—Transcript of hearing of Jan. 9, 1939, filed.
- Feb. 3—Brief filed by General Counsel.
- Feb. 7—Brief filed by taxpayer 2/7/39 copy served on General Counsel.
- Feb. 21—Reply brief filed by taxpayer. 2/21/39 copy served on General Counsel.
- Mar. 21—Motion for leave to file the attached supplemental reply brief, brief lodged filed by taxpayer. 3/21/39 Granted.
- 2 Mar. 21—Copy of motion and supplemental reply brief served on General Counsel.
- Apr. 12—Findings of fact and opinion rendered, Sam B. Hill, Div. 2. Decision will be rendered for the respondent.
- Apr. 17—Decision entered, Sam B. Hill, Div. 2.
- June 30—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.
- July 13—Proof of service filed.
- July 13—Praecipe filed by taxpayer, with proof of service thereon.

Before United States Board of Tax Appeals

Docket No. 93220

PAUL R. G. HORST, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appearances: For Taxpayer: Harry H. Wiggins, Esq. For Commissioner: J. R. Johnston, Esq.

Docket entries

1938

Apr. 29—Petition received and filed. Taxpayer notified. (Fee not paid).

Copy of petition served on General Counsel.

May 4—Fee paid (Check).

May 5—Copy of petition served on General Counsel.

3 May 20—Answer filed by General Counsel.

May 20—Request for Circuit hearing in New York City filed by General Counsel.

May 27—Notice issued placing proceeding on New York City Calendar. Answer and request served on taxpayer.

Nov. 16—Hearing set Jan. 9, 1939, in New York City.

1939

Jan. 9—Hearing had before Mr. Hill, Div. 2, on the merits. Submitted. Consolidated for hearing with Docket 90819. Stipulations of facts filed at hearing. Briefs due in 30 days, simultaneously.

Jan. 23—Transcript of hearing of Jan. 9, 1939, filed.

Feb. 3—Brief filed by General Counsel.

Feb. 7—Brief filed by taxpayer. 2/7/39 copy served on General Counsel.

Feb. 21—Reply brief filed by taxpayer. 2/21/39 copy served on General Counsel.

Mar. 21—Motion for leave to file the attached supplemental reply brief, brief lodged filed by taxpayer. 3/21/39 Granted.

Mar. 21—Copy of motion and supplemental reply brief served on General Counsel.

Apr. 12—Findings of fact and opinion rendered, Sam B. Hill, Div. 2. Decision will be rendered for the respondent.

Apr. 17—Decision entered, Sam B. Hill, Div. 2.

June 30—Petition for review by United States Circuit Court of Appeals, Second Circuit, with assignments of error filed by taxpayer.

July 13—Proof of service filed.

July 13—Praecipe filed by taxpayer, with proof of service thereon.

Before United States Board of Tax Appeals

Docket No. 90819

[Titled omitted.]

*Petition**Filed Sept. 24, 1937*

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated June 26, 1937, and as a basis for this proceeding alleges upon information and belief:

I

The petitioner is a citizen of the United States temporarily residing at No. 3 Avenue Elisee Reclus, Paris, France.

II

The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner on June 26, 1937.

III

The taxes in controversy are income taxes for the calendar year 1935 and the amount in controversy is \$14,106.53. The deficiency asserted is \$12,376.20, and the petitioner claims that he is entitled to a refund of \$1,730.33, which amount was paid by the petitioner within two years before the filing of this petition.

IV

The determination of tax set forth in the said notice of deficiency is based upon the following error:

5 The inclusion in the petitioner's income of the sum of \$25,495.00, representing the face value of negotiable coupons detached, transferred, and given before maturity by the petitioner to his son, Robert P. K. Horst as a gift.

V

The facts upon which the petitioner relies as the basis for this proceeding are as follows:

That on the dates hereinafter mentioned the petitioner detached, transferred, and delivered to his son, Robert P. K. Horst, as a gift, the following described negotiable coupons:

Face value of coupons	Name of bond	Due date of coupons	Date of gift
\$2,616.25	U. S. of Brazil 6½%.....	Oct. 1, 1935	Aug. 21, 1935
\$796.25	U. S. of Brazil 6½%.....	Oct. 15, 1935	Aug. 21, 1935
\$3,282.50	City of Milan 6½%.....	Oct. 1, 1935	Aug. 21, 1935
\$3,250.00	City of Rome 6½%.....	Oct. 1, 1935	Aug. 21, 1935
\$2,800.00	U. S. of Brazil 7%.....	Dec. 1, 1935	Aug. 21, 1935
\$2,750.00	City of Tokio 5½%.....	Oct. 1, 1935	Aug. 24, 1935
\$3,000.00	City of Yokohama 6%.....	Dec. 1, 1935	Aug. 24, 1935
\$7,000.00	Govt. of Italy 7%.....	Dec. 1, 1935	Aug. 24, 1935

Wherefore, the petitioner prays that this Board may hear the proceeding; that it may redetermine the liability of the petitioner for income taxes for the calendar year 1935; that in such redetermination it may find that there is an overpayment of income tax of \$1,730.33 for said year and that such amount was paid by the petitioner within two years before the filing of this petition, and that it may grant such other and further relief as may be proper and just.

HARRY H. WIGGINS,
Attorney for Petitioner.

Office & Post Office Address: No. 15 Broad Street, Borough of Manhattan, New York City.

DUER, STRONG & WHITEHEAD,
of Counsel.

6 [Duly sworn to by Harry H. Wiggins; jurat omitted in printing.]

7 *Exhibit A to petition*

SN-N

TREASURY DEPARTMENT,
Washington, June 26, 1937.

Office of Commissioner of Internal Revenue.

MR. PAUL R. G. HORST,

% Duer, Strong and Whitehead,
15 Broad Street, New York, New York.

SIR: You are advised that the determination of your income tax liability for the taxable year (s) ended December 31, 1935, discloses a deficiency of \$12,376.20 as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C1:P-7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will

prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner.

By CHAS. T. RUSSELL,
Deputy Commissioner.

Enclosures:

Statement.

Form 870.

8

STATEMENT

IT: A: 2.
ABB-90D.

In re: Mr. Paul R. G. Horst, % Duer, Strong and Whitehead, 15 Broad Street, New York, New York

Tax Liability for Taxable Year Ended December 31, 1935: Income tax, liability, \$40,441.66; assessed, \$28,065.46; deficiency, \$12,376.20.

The report of the Internal revenue agent in charge at 17 Battery Place, New York, New York, a copy of which was furnished you, is approved and is hereby made a part of this letter.

The revenue agent's findings were sustained after careful consideration of your protests dated February 1, 1937, and April 19, 1937, in connection with the findings of the examining officer and the information submitted at conferences held in the office of the internal revenue agent in charge on March 24, 1937, and May 14, 1937, respectively.

Your net income has been revised as follows:

Net income reported on your return	\$97,171.22
Add:	
1. Other income	\$22,360.00
2. Taxes disallowed	14.87
	<hr/> 22,374.87
Deduct:	
3. Gain on collection of coupons reduced	84.20
	<hr/> 22,290.67
Revised net income	<hr/> 119,461.89

9

Explanation of Changes

1. This office has sustained the revenue agent in his conclusion that \$22,360.00, representing the value of interest coupons which you transferred before maturity to your son, Robert P. K. Horst, as a gift, is taxable to you.

In *Porter v. United States Court of Claims*, 52 Fed. (2d) 1056, the court held that dividends, interest, rent, or other income assigned by gift to charitable organizations, or others, without transfer of the

income-producing property or without loss of control thereof, remain taxable to the transferor though the income is paid to the transferee.

Income Tax Ruling 3011, published in Internal Revenue Bulletin, Volume XV, No. 42, dated October 19, 1936, holds as follows:

"Interest accrued on bonds prior to donation to a trust is income taxable to the settler and not to the beneficiaries even though the settler returns his income on the cash receipts and disbursements basis."

In the above ruling, it was held that the conclusion reached was justified by the fact that at the time the interest accrued the property from which it was derived belonged to the settler, and by the further fact that the settler's failure actually to receive accrued interest was due solely to the voluntary assignment of it to the beneficiaries of the trust.

In the instant case, the bonds were retained and the accrued interest voluntarily assigned to your son. For all practical purposes, it actually represented an assignment of income which is ordinarily held to be taxable to the assignor.

Your attention is invited to the fact that Income Tax Ruling 3011, referred to above, was promulgated subsequent to the decision in the case of *Rosenwald v. Commissioner of Internal Revenue*, Circuit Court of Appeals, 33 Fed. (2d) 423, upon which you rely and also subsequent to the stipulations entered into in your case for the years 1928 and 1929.

10 2. French income and property taxes were overstated by \$14.87.

3. Gain realized on coupon collections was overstated by \$84.20.

Computation of Tax

Revised net income	\$119,461.89
Less: Personal exemption	2,500.00
Balance (surtax net income)	\$116,961.89
Less:	
Dividends	\$26,125.00
Credit on earned net income (10% of \$3,000.00)	300.00
	26,425.00
Balance subject to normal tax	\$90,536.89
Normal tax at 4% on \$90,536.89	\$3,621.48
Surtax on \$116,961.89	36,320.13
Total tax	\$40,441.66
Tax assessed, account #201446	28,065.46
Deficiency	\$12,376.20

Expenses totaling \$1,513.13, claimed on your return, have been allowed as a deduction from income.

In accordance with a request dated June 5, 1937, from Duer, Strong & Whitehead, this final notice of deficiency has been issued in accordance with section 272 of the Revenue Act of 1934.

A copy of this letter has been mailed to your representative, Mr. Harry H. Wiggins, % Duer, Strong & Whitehead, 15 Broad Street, New York, New York, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

11 Know all men by these presents: That I, Paul R. G. Horst, of 152 Carroll Street, Brooklyn, New York, have made, constituted, and appointed, and by these presents, do make, constitute, and appoint Selden Bacon, of Pleasantville, New York; Marshall Stearns, of New Canaan, Connecticut; Hugh Morgan, Jr., of West New Brighton, Richmond County, New York; Orwill V. W. Hawkins, of Plandome, Nassau County, New York; and Harry H. Wiggins, of Little Neck, Nassau County, New York, any or all of them, to be my true and lawful attorneys for me and in my name, place, and stead, to execute and file in my behalf amended returns, reports, claims for abatement, claims for refund, claims for credit, and any and all claims and other papers or documents, which may in any way affect or have any connection with any and all income-tax returns heretofore or hereafter filed by me and all income taxes at any time paid by me for the years covered by said returns or any additional income taxes claimed to be due under said income-tax returns or an account of income taxes covered by said returns, under the provisions of the Revenue Laws or other Statutes of the United States, and to appear for me before the Commissioner of Internal Revenue of the United States and any Board, Bureau, officers or other representatives of the Government of the United States or of any of its departments in connection with any of the aforesaid matters and to attend conferences, prepare and submit briefs, and make arguments in my behalf in connection therewith, to take appeals on my behalf to the United States Board of Tax Appeals relating to the aforesaid and sign the petition on said appeal, and any and all documents in any way connected with said appeal and to appear before said Board of Tax Appeals in my behalf, submit briefs, make arguments, and do all and everything in any way connected or relating to such an appeal and to receive and collect refunds and reclaims arising out of any of the aforesaid matters.

For better and more effectually executing the powers and
12 authorities aforesaid, to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do, if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorneys shall lawfully do or cause to be done by virtue hereof. This authority to remain in full force until revoked by me.

I hereby revoke the power of attorney given by me to William H. Van Benschoten, dated and acknowledged the 6th day of July 1926.

In witness whereof, I have hereunto set my hand and seal the 27 day of Aug., in the year of Our Lord, one thousand nine hundred and thirty.

PAUL R. G. HORST.

GERMAN REICH, STATE OF BAVARIA,

Consulate General of the

United States of America at Munich, ss:

Be it known, That on this 27th day of One thousand nine hundred and thirty, at the City of aforesaid, before me a Consul General of the United States of America, dwelling in said City of Munich, personally came and appeared Paul R. G. Horst, to me known, and known to me to be the individual described in, and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

In testimony whereof, I have hereunto set my hand and affixed the Consular Seal of the United States of America at the City of Munich aforesaid, the day and year last above written.

[CONSULAR SEAL]

CHARLES M. HATHAWAY, Jr.,

Charles M. Hathaway, Jr.,

Consul General of the United States of America.

Fee No. 45. Service No. 2506. U. S. Gold. No fee.

13 Before United States Board of Tax Appeals

Docket No. 90819

[Title omitted.]

Answer

Filed Nov. 12, 1937

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I. Admits the allegations contained in Paragraph I of the petition.

II. Admits the allegations contained in Paragraph II of the petition.

III. Admits that the taxes in controversy are income taxes for the calendar year 1935 and that the deficiency asserted by respondent is \$12,376.20; but denies the remaining allegations contained in Paragraph III of the petition.

IV. Denies that respondent's determination is erroneous as alleged in Paragraph IV of the petition.

V. Admits the allegations of fact contained in Paragraph V of the petition.

14 Denies generally and specifically each and every allegation contained in the petition and not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the appeal be denied.

(Signed) J. P. WENCHEL,
J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

CHESTER A. GWINN,
CHARLES E. LOWERY,
Special Attorneys,
Bureau of Internal Revenue.

Before United States Board of Tax Appeals

Docket No. 93220

[Title omitted.]

Petition

Filed April 29, 1938

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated March 7, 1938, and as a
15 basis for this proceeding, alleges upon information and belief:

I

The petitioner is a citizen of the United States, temporarily residing at No. 3 Avenue Elisee Reclus, Paris, France.

II

The notice of deficiency (a copy of which is hereto attached, marked Exhibit "A" and made a part hereof) was mailed to the petitioner on March 7, 1938.

III

The taxes on controversy are income taxes for the calendar year 1934 and the amount in controversy is \$13,903.09.

IV

The determination of tax set forth in the said notice of deficiency is based upon the following error:

The inclusion in the petitioner's income of the sum of \$25,182.50, representing the face value of negotiable coupons detached, transferred, and given before maturity by the petitioner to his son, Robert P. K. Horst, as a gift.

V

The facts upon which the petitioner relies as the basis for this proceeding are as follows:

That the said sum of \$25,182.50, included in the petitioner's income by the respondent, represents the face value of negotiable interest coupons hereinafter described, and that on the dates hereinafter mentioned, the said coupons were detached, transferred, and delivered, before maturity, by the petitioner to his son, Robert P. K. Horst, as a gift, to wit:

Face value of coupons	Name of bond	Due date of coupons (1934)	Date of gift (1934)
\$3,500.00	Tobe Elec. Pr. Co. 7s.....	Sep. 15	Aug. 10
\$3,500.00	Ujigawa Elec. Pr. Co. 7s.....	Sep. 15	Aug. 10
\$3,282.80	City of Milan 6½s.....	Oct. 1	Aug. 10
\$2,250.00	City of Rome 6½s.....	Oct. 1	Aug. 10
\$2,750.00	City of Tokio 5½s.....	Oct. 1	Aug. 10
\$3,000.00	City of Yokohama 6s.....	Dec. 1	Aug. 10
\$4,500.00	Tokio Elec. Lt. Co. 6s.....	Dec. 15	Aug. 10
\$1,400.00	Kingdom of Italy 7s.....	Dec. 1	Aug. 10

Wherefore the petitioner prays that this Board may hear the proceeding; that it may redetermine the liability of the petitioner for the deficiency in income taxes for the year 1934 asserted by the respondent; that in such redetermination it may find that the coupons, described in Paragraph V hereof, detached, transferred, and given before maturity by the petitioner to his son, Robert P. K. Horst, are not taxable income as against him; that there is no deficiency due from the petitioner for the year 1934; and that your petitioner may have such other and further relief as may be proper and just.

HARRY H. WIGGINS,
Harry H. Wiggins,
Attorney for Petitioner.

Office and P. O. Address, No. 15 Broad Street, Borough of Manhattan, New York City, N. Y.

DUER, STRONG & WHITEHEAD,
of Counsel.

17 [*Duly sworn to by Harry H. Wiggins; jurat omitted in printing.*]

18 *Exhibit A to petition*

SN-N

TREASURY DEPARTMENT,
Washington, Mar. 7, 1938.

Office of Commissioner of Internal Revenue.

Mr. PAUL R. G. HORST,
% Duer, Strong & Whitehead,
15 Broad Street, New York, New York.

SIR: You are advised that the determination of your income tax liability for the taxable year(s) ended December 31, 1934, discloses a deficiency of \$13,903.09 as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT: C1: P-7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,
Commissioner,
By JOHN R. KIRK,
Deputy Commissioner.

Enclosures:
Statement.
Form 870.

19

STATEMENT

IT: A: 2.
MEK: 90D.

Mr. Paul R. G. Horst, % Duer, Strong & Whitehead, 15 Broad Street,
New York, New York

Tax Liability for Taxable Year Ended December 31, 1934: Income tax, liability \$37,710.22; assessed \$23,807.13; deficiency \$13,903.09.

The deficiency as shown herein results from including \$25,182.50, representing the value of certain bond coupons detached and transferred to your son Robert P. K. Horst as a gift during the year 1934.

Adjustments to Net Income

Net income as shown in revenue agent's report dated July 6, 1936 (Deficiency arising from adjustments in revenue agent's report assessed in accordance with 870 agreement)-----	\$32,544.73
Add: (a) Value of bond coupons transferred to Robert P. K. Horst-----	25,182.50
Net income adjusted-----	\$117,727.23

Explanation of Adjustments

(a) The value of coupons transferred by you to your son is held to be taxable income to you for the reason that the bonds themselves had not been transferred to your son. I. T. 3011 Cumulative Bulletin XV-2 page 132 (1936) provides that interest

20

on bonds prior to a trust is income taxable to settlor and not to the beneficiaries, even though the settlor returns his income on the cash receipts and disbursements basis.

Computation of Tax

Net income adjusted.....		\$117,727.23
Less: Personal exemption.....		2,500.00
Balance (surtax net income).....		\$115,227.23
Less:		
Dividends.....	\$24,421.00	
Earned income credit (\$3,000.00).....	300.00	24,721.00
Balance subject to normal tax.....		\$90,506.23
Normal tax at 4% on \$90,506.23.....		\$3,620.25
Surtax on \$115,227.23.....		35,918.16
Total tax.....		\$39,538.41
Less: Taxes paid to a foreign country.....		1,828.19
Tax liability.....		\$37,710.22
Tax previously assessed:		
Original account #200174.....	\$22,910.03	
Additional November 1936, account #510082.....	897.10	
		23,807.13
Deficiency of income tax.....		\$13,903.09

21 Know all men by these presents: That I, Paul R. G. Horst, of 152 Carroll Street, Brooklyn, New York, have made, constituted, and appointed, and by these presents, do make, constitute, and appoint Selden Bacon of Pleasantville, New York, Marshal Stearns of New Canaan, Connecticut, Hugh Morgan, Jr., of West New Brighton, Richmond County, New York, Orwill V. W. Hawkins of Plandome, Nassau County, New York, and Harry H. Wiggins, of Little Neck, Nassau County, New York, any or all of them, to be my true and lawful attorneys for me and in my name, place, and stead to execute and file in my behalf amended returns, reports, claims for abatement, claims for refund, claims for credit, and any and all claims and other papers or documents, which may in any way affect or have any connection with any and all income-tax returns heretofore or hereafter filed by me and all income taxes at any time paid by me for the years covered by said returns or any additional income taxes claimed to be due under said income-tax returns or on account of income taxes covered by said returns, under the provisions of the Revenue Laws or other Statutes of the United States, and to appear for me before the Commissioner of Internal Revenue of the United States and any Board, Bureau, officers or other representatives of the Government of the United States or of any of its departments in connection with any of the aforesaid matters, and to attend conferences, prepare and submit briefs and make arguments in my behalf in connection therewith, to take appeals on my behalf to the United States Board of Tax Appeals relating to the aforesaid and sign the petition on said appeal, and any and all documents in any way connected with said appeal, and to appear before

said Board of Tax Appeals in my behalf, submit briefs, make arguments and do all and everything in any way connected or relating to such an appeal and to receive and collect refunds and reclaims arising out of any of the aforesaid matters.

For better and more effectually executing the powers and authorities aforesaid, to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do, if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorneys shall lawfully do or cause to be done by virtue hereof. This authority to remain in full force until revoked by me.

I hereby revoke the power of attorney given by me to William H. Van Benschoten, dated and acknowledged the 6th day of July 1926.

In witness whereof, I have hereunto set my hand and seal the 27 day of Aug. in the year of Our Lord, one thousand nine hundred and thirty.

PAUL R. G. HORST.

GERMAN REICH, STATE OF BAVARIA,

Consulate General of the United

States of America at Munich, ss:

Be it known, That on this 27th day of One thousand nine hundred and thirty, at the City of aforesaid, before me a Consul General of the United States of America, dwelling in said City of Munich, personally came and appeared Paul R. G. Horst, to me known, and known to me to be the individual described in, and who executed, the foregoing instrument, and he acknowledged to me that he executed the same.

In testimony whereof, I have hereunto set my hand and affixed the Consular Seal of the United States of America at the City of Munich aforesaid, the day and year last above written.

[CONSULAR SEAL]

CHARLES M. HATHAWAY, Jr.,

Charles M. Hathaway, Jr.,

Consular General of the United States of America.

Fee No. 45. Service No. 2506. U. S. Gold. No fee.

23 Before United States Board of Tax Appeals

Docket No. 93220

[Title omitted.]

Answer

Filed May 20, 1938

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I. Admits the allegations contained in Paragraph I of the petition.

II. Admits the allegations contained in Paragraph II of the petition.

III. Admits the allegations contained in Paragraph III of the petition.

IV. Denies that the respondent's determination is erroneous as alleged in Paragraph IV of the petition.

V. Admits the allegations of fact contained in Paragraph V of the petition.

VI. Denies generally and specifically each and every allegation contained in the petition and not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the appeal be denied.

(Signed) J. P. WENCHEL,
G. W. K.

J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

CHESTER A. GWINN,
ARTHUR W. CARNDUFF,
Special Attorneys,
Bureau of Internal Revenue.

Before United States Board of Tax Appeals

PAUL R. G. HORST, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Docket Nos. 90819, 93220. Promulgated April 12, 1935

Findings of fact and opinion

The owner of foreign, state, municipal, and industrial coupon bonds, clipped therefrom and delivered before maturity to another, as a gift, negotiable interest coupons having a maturity within the taxable year. Payments were received on the coupons by the donee within the taxable year. The donor was the owner of the bonds throughout the taxable year and kept his books and made his income-tax returns on the cash receipts and disbursements basis. Held, that the amounts received by the donee on the coupons were taxable income to the donor.

25 Harry H. Wiggins, Esq., for the petitioner.

J. R. Johnston, Esq., for the respondent.

These consolidated proceedings involve the redetermination of income tax deficiencies in the amounts of \$13,903.09 and \$12,376.20 for the respective years 1934 and 1935.

The facts are all stipulated and we adopt the stipulation as our findings of fact. For the purposes of our opinion we deem it necessary to set forth herein only the following findings of fact.

Findings of fact

1. Petitioner is and was during the years 1934 and 1935 a citizen of the United States, temporarily residing at No. 3 Avenue Elisee Reclus, Paris, France.

2. During the years 1934 and 1935 petitioner kept his books and made his income tax returns on the cash receipts and disbursements basis.

3. Throughout the year 1934 petitioner owned foreign state, municipal, and industrial coupon bonds from which, on the 10th day of August 1934, he detached and transferred by manual delivery to his son, Robert P. K. Horst, as a gift, prior to their maturity, negotiable interest coupons of an aggregate face value of \$25,182.50.

4. All of such coupons matured during the year 1934 and in that year Robert P. K. Horst collected therefrom the total amount of \$25,182.50 and reported such amount in his Federal income tax return for that year.

5. Throughout the year 1935 petitioner owned foreign state, municipal, and industrial coupon bonds from which, in August 1935, he detached and transferred by manual delivery to his son, Robert P. K. Horst, as a gift, prior to their maturity, negotiable interest coupons of an aggregate face value of \$37,032.50.

26 6. All of such coupons matured during the year 1935 and in that year Robert P. K. Horst collected therefrom the total amount of \$25,495 and reported such amount in his Federal income tax return for that year.

7. Petitioner did not report in his income tax return for the year 1934 any part of the amount represented by the interest coupons delivered as a gift to his son in that year, and petitioner did not report in his income tax return for the year 1935 any part of the amount represented by the interest coupons delivered as a gift to his son in that year.

8. Respondent in determining the deficiency for the year 1934 added to the taxable income of the petitioner the amount of \$25,182.50 as the value of the coupons transferred to Robert P. K. Horst in that year, and in determining the deficiency for the year 1935, respondent added to the taxable income of the petitioner the sum of \$22,360 as the aggregate net worth of all of the coupons transferred by petitioner to his son in that year.

9. Deficiency in income tax for the year 1934 resulted solely from the addition to income of petitioner in that year of the above stated amount of \$25,182.50. The deficiency in income tax for the year 1935 resulted from the addition to income of petitioner in that year of the above-stated amount of \$22,360 plus certain other minor adjustments not in controversy here.

Opinion

HILL: There is only one question for determination, namely, whether the amounts collected in the respective years 1934 and 1935 on the coupons involved are taxable as income to petitioner. We think they are. It is true that we were reversed on a similar point in our decision in *Julius Rosenwald*, 12 B. T. A. 350, by the United

States Circuit Court of Appeals for the Seventh Circuit, 33 27 Fed. (2d) 423. The court assigned as the basis for such reversal that the severance and delivery of the coupons before maturity constituted a completed gift and hence the coupons were not taxable to the owners of the bonds from which they had been severed. We think our decision in that case was right and respectfully decline to follow the decision of the Circuit Court of Appeals on the point stated. Unquestionably the gift of the coupons in that case, as well as in the instant case, was a completed one, but it was, nevertheless, a gift of income. The severance and negotiation of an interest coupon does not change the character of the thing which it evidences and represents. That thing is interest on the bond from which the coupon was severed. Such interest is income derived from the bond, whether it be paid to the owner of the bond or to his donee or assignee. The owner of property which produces income is chargeable with such income for tax purposes regardless of whether he receives or enjoys the income. *Van Meter v. Commissioner*, 61 Fed. (2d) 817; *Bing v. Bowers*, 22 Fed. (2d) 450; affirmed per curiam (C. C. A., 2d Cir.), 26 Fed. (2d) 1017; *Ward v. Commissioner* (C. C. A., 9th Cir.), 58 Fed. (2d) 757.

In the *Van Meter* case, *supra*, the court said:

"The Supreme Court has definitely determined that Congress has the power to tax the earner of income, therefore, irrespective of whether it is paid to someone else. [Citing a number of cases.]

"The 'earner' of income is one whose personal efforts have produced it; who owns property which produced it or a combination of the two. Decisions of the Supreme Court have declared that the income statutes require taxation to the earner in each of the three above sources of income where the income was actually realized but never came to beneficial enjoyment by the earner. * * *

28 "In determining who is taxable for an income, there are three considerations which may be of importance, to wit, who earns the income, who receives it, and who enjoys it. Where the same person earns, receives, and enjoys the income (the normal and usual situation), there is no difficulty. Where different persons earn, receive, and/or enjoy the income, disputes occur. In determining such disputes, the vital matter is always the relation of the earner (whether a person, owner of property or combination of the two) of the income to the income so earned. The rule and intent of the taxing statutes is that the earner of income which he might and, normally, would receive and enjoy for himself is not relieved because he chooses not to receive or not to enjoy it, and this is not necessarily changed by

such deprivation taking the form of an obligation legally binding him thereto, * * * but where the earner of the income does nothing more than transfer the income earned in his own right to another, even though such disposal be in advance of the earning thereof (*Burnet v. Leininger* and *Lucas v. Earl*, supra), or where he retains any power of control over the income earning property or the income therefrom (*Corliss v. Bowers*, 281 U. S. 376, 50 S. Ct. 336, 74 L. Ed. 916, and analogous as to transfer tax, *Chase Nat. Bank v. U. S.*, 278 U. S. 327, 49 S. Ct. 126, 73 L. Ed. 405, 63 A. L. R. 388; *Reinecke v. Northern Trust Co.*, 278 U. S. 339, 49 S. Ct. 123, 73 L. Ed. 410, 66 A. L. R. 397, and as to State succession tax, *Saltonstall v. Saltonstall*, 276 U. S. 260, 48 S. Ct. 225, L. Ed. 565), such income is taxable to him within the intent of the statute (*Burnet v. Leininger*, *Lucas v. Earl* and *Corliss v. Bowers*, supra).

* * * It may be true that income already entirely earned is transferable as a species of property, but that has no effect upon the power and intention of Congress to tax income to the earner. The earner may, in a legally binding way, dispose of his earnings, 29 whether they are already earned or are to be earned, without affecting in the slightest manner his status as earner thereof and his resulting liability for taxation thereon as income."

In the case of *Bing v. Bowers*, supra, the court said:

"To permit the assignor of future income from his own property to escape taxation thereon by a gift grant in advance of the receipt by him of such income would by indirection enlarge the limited class of deductions established by statute. As long as he remains the owner of the property, the income therefrom should be taxable to him as fully, when he grants it as a gift in advance of its receipt, as it clearly is despite a gift thereof immediately after its receipt."

The *Ward* case, supra, affirming 22 B. T. A. 352, supports the proposition that the owner of income producing property is chargeable, for tax purposes, with the income therefrom even though he may have transferred such income by gift or other assignment to another. The court, in the *Ward* case, quoted with approval from *Rosenwald v. Commissioner* (C. C. A. 7th Cir.), 33 Fed. (2d) 423, 426, as follows:

"Petitioner's chief contention is that there was a completed gift, and that petitioner never received the income.

"It is doubtful whether a holder of securities may separate the income thereafter to accrue from the principal, and make a gift by way of assignment of the income, without assigning or trusteeing the thing out of which the income arises, where the effect would be to relieve the donor from a tax he would otherwise be required to pay."

The court, in the *Ward* case, further said:

30 "Numerous other cases also hold that assigned income is taxable to the assignor, unless the corpus producing the income is also assigned." See *Appeal of Fred W. Warner*, 5 B. T. A. 963, and *Irene McFadden Winder, Executrix, v. Commissioner*, 17 B. T. A. 303, and cases cited therein. See, also, *Porter v. United States* (Ct.

Cl.), 52 Fed. (2d) 1056; *Bishop v. Commissioner* (C. C. A., 7), 54 Fed. (2d) 298.

Petitioner contends that he is not taxable on the items here involved for the reason that the coupons in question when severed and negotiated before maturity of the interest they represented became separate and independent instruments. Conceding that upon severance the coupons became separate and independent instruments, the fact remains that the proceeds of the coupons when collected constituted income derived from the bonds from which they were severed. It is stipulated that the ownership of the bonds remained at all times during the taxable years in petitioner.

The facts in the instant case clearly distinguish it from the case of *Rebekah C. Schoonmaker*, 39 B. T. A. — (Feb. 24, 1939). In the latter case the gift was of bonds with unmatured interest coupons attached. In other words, the gift in that case was of income producing property, the income from which for the taxable year had not at the time of the gift been received, either actually or constructively, by the donor, whose books and income tax returns were on the cash receipts and disbursements basis. We held in that case that the accrued but unmatured interest represented by the interest coupons was not includable as taxable income to the donor. In the instant case the income producing property was retained by the donor and only the accruing income therefrom in the taxable years was transferred as a gift to another prior to the time of its maturity.

We hold that petitioner is chargeable with income, for tax purposes, in the full amounts collected from the coupons in question in the respective years 1934 and 1935. However, respondent based his determination of deficiency for the year 1935 on the addition to petitioner's income in such year of only \$22,360, instead of \$25,495, the amount actually collected from the coupons in that year, and has not asked for an increased deficiency. Accordingly, we approve the respondent's determinations.

Reviewed by the Board.

Decision will be entered for the respondent.

BLACK, dissenting: When negotiable coupons attached to coupon bonds are detached it seems to me they become separate and distinct property from the bonds and are subject to be sold separately or to be the subject of a completed gift, *inter vivos*. If a gift of such detached coupons is made by the owner prior to their maturity there would be no realization of income thereby to the donor. Cf. *Rebekah C. Schoonmaker*, 39 B. T. A. — (Feb. 24, 1939). There would likewise be no income to the donee by reason of the gift itself. See section 22 (b) (3) of the Revenue Act of 1934, which reads:

“(b) **Exclusions from Gross Income.**—The following items shall not be included in gross income and shall be exempt from taxation under this title:

“(3) **Gifts, Bequests, and Devices.**—The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income).”

However, when the coupons matured in the hands of the donee and he collected them the amount collected was income to him as interest. See section 22 (a) of the Revenue Act of 1934. The entire amount collected, even if it be not proper to call all of it interest, would be income to the donee, if the coupons had no cost basis to the donor, as indeed in most cases they would not have unless the donor purchased the bonds with some accrued but unmatured interest coupons attached. The donee has the same basis of cost as the donor. See section 113 (a) (2) of the Revenue Act of 1934.

The findings of fact in the majority opinion show that in each of the taxable years Robert P. K. Horst, the donee of the unmatured coupons, collected the interest due thereon when it matured and returned the entire amount for taxation in the year the interest was collected. This, I think, was proper because the coupons had no cost basis to the donor and hence none to the donee.

I think the court was right in holding in *Rosenwald v. Commissioner*, 33 Fed. (2d) 423, that Rosenwald's delivery to a charitable fund of negotiable Third Liberty Loan bond coupons before their maturity constituted a completed gift and the interest thereafter collected by the charitable fund from such bond coupons was not income to the donor. The evidence upon which the court based its decision in the *Rosenwald* case as to the Liberty bond coupons is stated in the court's opinion as follows: "There is evidence that petitioner clipped and delivered to the fund, before their maturity, interest coupons from Third Liberty Loan Bonds."

The facts in the instant case seem clearly to bring it within the rule announced by the court in the *Rosenwald* case. I, therefore, respectfully dissent from the majority opinion.

LEECH and DISNEY agree with this dissent.

Before United States Board of Tax Appeals, Washington

Docket No. 90819, 93220

PAUL R. G. HORST, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

Pursuant to the determination of the Board, as set forth in its findings of Fact and Opinion, promulgated April 12, 1939, it is

Ordered and decided: That there are deficiencies in income tax for the years 1934 and 1935, in the amounts of \$13,903.09 and \$12,376.20, respectively.

Enter:

Entered April 17, 1939.

(Signed) SAM B. HILL, Member.

[Title omitted.]

Petition for review and assignments of error

Filed June 30, 1939

The above-named petitioner hereby petitions for a review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the United States Board of Tax Appeals rendered on the 17th day of April, 1939, 39 B. T. A., No. 102, determining deficiencies in the petitioner's Federal income taxes for the calendar years 1934 and 1935 in the respective amounts of \$13,903.09 and \$12,376.20; and respectfully shows:

I. That the petitioner is and was during the years 1934 and 1935 a citizen of the United States, temporarily residing at No. 3 Avenue Elisee Reclus, Paris, France, and filed his income-tax returns for the calendar years 1934 and 1935, which are the taxable years involved herein, with the Collector of Internal Revenue for the First District of New York, whose office is located in the County of Kings, in the State of New York, and within the territorial jurisdiction of the United States Circuit Court of Appeals for the Second Circuit.

II. The controversy involves the petitioner's liability for Federal income taxes for the calendar years 1934 and 1935.

35 The petitioner, on August 10, 1934, detached from certain foreign, state, municipal and industrial coupon bonds owned by him, and transferred by manual delivery to his son, Robert P. K. Horst, as a gift, prior to their maturity, negotiable interest coupons of an aggregate face value of \$25,182.50. The said Robert P. K. Horst, in the year 1934, collected from the said coupons, at their maturity, the total amount of \$25,182.50, and reported said amount in his Federal income tax return for that year.

The petitioner, in August, 1935, detached from certain foreign, state, municipal and industrial coupon bonds owned by him, and transferred by manual delivery to his son, Robert P. K. Horst, as a gift, prior to their maturity, negotiable interest coupons of an aggregate face value of \$37,032.50. The said Robert P. K. Horst, in the year 1935, collected from the said coupons, at their maturity, the total amount of \$25,495.00, and reported said amount in his Federal income tax return for that year.

The petitioner did not report any part of the amount represented by the interest coupons delivered as a gift to his son in the year 1934, in his income tax return for that year, nor any part of the amount represented by the interest coupons delivered as a gift to his son in the year 1935, in his income tax return for that year.

The Commissioner of Internal Revenue, the respondent herein, held that the amounts collected by the petitioner's son from the coupons delivered in the respective years 1934 and 1935, prior to their

maturity, by the petitioner to his son, as a gift, were taxable as income to the petitioner; and the Commissioner added to the petitioner's income the amounts of \$25,182.50 and \$22,360.00 for the years 1934 and 1935, respectively, and determined deficiencies in the petitioner's income tax for the years 1934 and 1935 in the amounts of \$13,903.09 and \$12,376.20, respectively.

The United States Board of Tax Appeals approved the Commissioner's determination.

III. The petitioner, being aggrieved by the determination of the United States Board of Tax Appeals as set forth in its findings of fact and opinion, promulgated April 22, 1939, and by its decision rendered pursuant thereto desires to obtain a review thereof by the United States Circuit Court of Appeals for the Second Circuit.

IV. The petitioner, as a basis for review, makes the following assignments of error:

1. The United States Board of Tax Appeals erred in holding that the amount collected by the petitioner's son from the coupons delivered on August 10, 1934, prior to their maturity, by the petitioner to his son, as a gift, was taxable income to the petitioner.

2. The United States Board of Tax Appeals erred in including in the petitioner's income for 1934 the sum of \$25,182.50, representing the amount collected by the petitioner's son from negotiable interest coupons detached from certain foreign, state, municipal and industrial coupon bonds owned by the petitioner, and transferred by manual delivery, prior to maturity, by the petitioner to his son, Robert P. K. Horst, as a gift.

3. The United States Board of Tax Appeals erred in holding that the amount collected by the petitioner's son from the coupons delivered in August 1935, prior to their maturity, by the petitioner to his son, as a gift, was taxable as income to the petitioner.

4. The United States Board of Tax Appeals erred in including in the petitioner's income for 1934 the sum of \$25,182.50, representing the amount collected by the petitioner's son from negotiable interest coupons detached from certain foreign, state, municipal and industrial coupon bonds owned by the petitioner, and transferred by manual delivery, prior to maturity, by the petitioner to his son, Robert P. K. Horst, as a gift.

5. The United States Board of Tax Appeals erred in determining deficiencies in the petitioner's income tax for the years 1934 and 1935 instead of determining that there is no deficiency due from the petitioner for the year 1934 and that there is an overpayment of income tax of \$1,730.33 for the year 1935.

HARRY H. WIGGINS,
Harry H. Wiggins,
Attorney for Petitioner.

Office & P. O. Address, No. 15 Broad Street, Borough of Manhattan, New York City, N. Y.

[Duly sworn to by Harry H. Wiggins; jurat omitted in printing.]

[Title-omitted.]

Notice of filing petition for review

Filed July 13, 1939

To J. P. WENCHEL, Esq.,

Chief Counsel, Bureau of Internal Revenue, Washington, D. C.

SIR: Please take notice that the petitioner did on the 30th day of June 1939 file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the Board heretofore rendered in the above-entitled appeals. A copy of the petition for review and the assignments of error as filed is hereto attached and served on you.

Dated New York, N. Y., July 7, 1939.

Respectfully,

HARRY H. WIGGINS,
Harry H. Wiggins,
Attorney for Petitioner.

Office and Post Office Address, No. 15 Broad Street, Borough of Manhattan, New York City.

39 Personal service of the foregoing notice, together with a copy of the Petition for Review and Assignments of Error mentioned therein is hereby acknowledged this 8th day of July 1939.

J. P. WENCHEL,
W.

*Chief Counsel, Bureau of Internal Revenue,
Attorney for Respondent.*

Before United States Board of Tax Appeals

Docket No. 90819

[Title omitted.]

Stipulation of facts

Filed at Hearing, Jan. 9, 1939

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel of record, that the following facts shall be taken as true, provided however that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be true.

1. That the petitioner is and was during the year 1935 a citizen of the United States, temporarily residing at No. 3 Avenue Elisee Recius, Paris, France.

2. That on the dates hereinafter set out, the petitioner detached, transferred, and delivered to his son, Robert P. K. Horst, as a gift, prior to their maturity, the following described negotiable interest coupons from the following-described bonds of which the petitioner was the owner throughout the year 1935, to wit:

Principal amount of bond	Name of bond	Due date of coupon	Face amount of coupon	Amount collected	Date of gift
101M	City of Milan, Italy 6½-52	10-1-35	\$3,282.50	\$3,282.50	8-21-35
100M	City of Rome, Italy 6½-52	10-1-35	3,280.00	3,280.00	8-21-35
100M	City of Tokyo, Japan 5½-52	10-1-35	2,750.00	2,750.00	8-24-35
100M	City of Yokohama, Japan 6-61	12-1-35	3,000.00	3,000.00	8-24-35
200M	Kingdom of Italy 7-61	12-1-35	7,000.00	7,000.00	8-24-35
200M	U. S. of Brazil 8-41	12-2-35	8,000.00	2,800.00	8-21-35
70M	U. S. of Brazil 6½-57	10-15-35	2,275.00	796.25	8-21-35
200M	U. S. of Brazil 6½-57	10-1-35	7,475.00	2,616.25	8-21-35
			37,082.50	25,495.00	

3. The Commissioner in determining the deficiency for the year 1935, added to the taxable income of the petitioner, the sum of \$22,360.00 as the aggregate net worth of all of the above coupons at the time of transfer by him to his son.

4. For the year 1935, the said Robert P. K. Horst collected from the above-described coupons, at their maturity, the respective amounts shown by the statement in Paragraph 2 hereof, and in the sum of \$25,495.00.

5. For the year 1935, the petitioner kept his books and made his return of income to the Federal Government on the cash receipts and disbursements basis.

6. That the pleadings shall be deemed amended, if necessary, to conform to the facts set forth in this stipulation.

HARRY H. WIGGINS,
Counsel for Petitioner.

J. P. WENCHEL,
J. P. Wenchel,
Chief Counsel,
Bureau of Internal Revenue.

Before United States Board of Tax Appeals

Docket No. 93220

[Title omitted.]

Stipulation of facts

Filed at Hearing, Jan. 9, 1939

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel of record, that the following facts shall be taken as true, provided however that this stipulation

shall be without prejudice to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be true.

42 1. That the petitioner is and was during the year 1934 a citizen of the United States, temporarily residing at No. 3 Avenue Elisee Reclus, Paris, France.

2. That on the 10th day of August, 1934, the petitioner detached and transferred by manual delivery to his son, Robert P. K. Horst, as a gift, prior to their maturity, the following described negotiable interest coupons of an aggregate face value of \$25,182.50 from the following-described bonds owned by petitioner throughout the year 1934, to wit:

Face value of coupons	Name of bond	Due date of coupons (1934)	Date of gift (1934)
\$3,500.00	Toho Electric Power Co. 7s due 1955.....	Sept. 15	Aug. 10
\$3,500.00	Ujigawa Electric Power Co. 7s due 1945.....	Sept. 15	Aug. 10
\$3,282.50	City of Milan 6½s due 1952.....	Oct. 1	Aug. 10
\$3,250.00	City of Rome 6½s due 1952.....	Oct. 1	Aug. 10
\$2,750.00	City of Tokio 5½s due 1961.....	Oct. 1	Aug. 10
\$3,000.00	City of Yokohama 6s due 1961.....	Dec. 1	Aug. 10
\$4,500.00	Tokio Electric Light Co. 6s due 1953.....	Dec. 15	Aug. 10
\$1,400.00	Kingdom of Italy 7s due 1951.....	Dec. 1	Aug. 10

3. That during the year 1934, the said Robert P. K. Horst collected the said coupons and reported the collections therefrom in the sum of \$25,182.50 in his Federal income-tax return for that year.

4. That during the year 1934, the petitioner kept his books and made his return of income on the cash receipts and disbursements basis.

43 5. That the pleadings shall be deemed amended, if necessary, to conform to the facts set forth in this stipulation.

HARRY H. WIGGINS,
Counsel for Petitioner.

J. P. WENCHEL,
J. P. Wenchel,

Chief Counsel, Bureau of Internal Revenue.
Counsel for Respondent.

Before United States Board of Tax Appeals

Docket Nos. 90819 and 93220

[Title omitted.]

Praecepte for record

Filed July 13, 1939

To the CLERK OF THE UNITED STATES BOARD OF TAX APPEALS:

You are hereby requested to prepare and certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Second Circuit, with reference to the Petition for Review heretofore filed by

the Petitioner in the above entitled appeals, a transcript of the record in the above-entitled appeals, prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript of record the following documents, or certified copies thereof, to wit,

1. The docket entries of all proceedings before the Board of Tax Appeals in the above-entitled appeals.
2. The pleadings before the Board of Tax Appeals in Docket No. 90819, as follows:
 - (a) Petition for Redetermination,
 - (b) Answer of the Respondent,
3. The pleadings before the Board of Tax Appeals in Docket No. 93220, as follows:
 - (a) Petition for Redetermination,
 - (b) Answer of the Respondent,
4. The Findings of Fact and Opinion of the Board of Tax Appeals.
5. The Decision of the Board.
6. The Petition for Review filed by the Petitioner in the above-entitled appeals, together with notice of filing thereof and admission of service endorsed thereon.
7. Stipulation of Facts in Docket No. 90819.
8. Stipulation of Facts in Docket No. 93220.
9. This Praeceptum.

Yours, etc.,

HARRY H. WIGGINS,
Harry H. Wiggins,
Attorney for Petitioner.

Office and Post Office Address: No. 15 Broad Street, Borough of Manhattan, New York City.

Personal service of a copy of the foregoing Praeceptum is hereby acknowledged this 8th day of July, 1939.

J. P. WENCHEL,
W.

Chief Counsel, Bureau of Internal Revenue,
Attorney for Respondent.

[Clerk's certificate to foregoing transcript omitted in printing.]

In United States Circuit Court of Appeals for the
Second Circuit

No. 83—October Term, 1939

(Argued October 18, 1939—Decided November 13, 1939)

PAUL R. G. HORST, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appeal from the Board of Tax Appeals

Petition by Paul R. G. Horst to review a decision of the Board of Tax Appeals, determining deficiencies in income tax for 1934 and 1935. Reversed.

Before SWAN, CHASE, and PATTERSON, Circuit Judges.

Duer, Strong & Whitehead (Orville V. W. Hawkins and Harry H. Wiggins, of counsel), for petitioner. Samuel O. Clarke, Jr., Assistant Attorney General, and Sewall Key and Morton K. Rothchild, Special Assistants to the Attorney General, for respondent.

Opinion

PATTERSON, Circuit Judge:

The question is whether a taxpayer who detaches coupons from bonds owned by him and delivers them to another as a gift prior to the time when the coupons are payable is liable for income tax on the amounts later collected on the coupons by the transferee.

The petitioner owned a number of coupon bonds. The coupons represented the interest on the bonds and were payable to bearer. In 1934 he detached unmatured coupons of face value of \$25,182.50 and transferred them by manual delivery to his son as a gift. The coupons matured later on in the same year, and the son collected the face amount, \$25,182.50, as his own property. There was a similar transaction in 1935. The petitioner kept his books on a cash basis. He did not include any part of the moneys collected on the coupons in his income tax returns for these two years. The son included them in his returns. The Commissioner added the moneys collected on the coupons to the petitioner's taxable income and determined a tax deficiency for each year. The Board of Tax Appeals, three members dissenting, sustained the Commissioner, holding that the amounts collected on the coupons were taxable as income to the petitioner.

The Board refused to follow *Rosenwald v. Commissioner*, 33 F. 2d, 423 (C. C. A. 7), certiorari denied, 280 U. S. 599, where the facts were the same as in the present case. *Rosenwald* clipped bearer

coupons and delivered them to a donee prior to the due date. The donee collected the money due. It was held that the interest collected on the coupons was not income of Rosenwald for tax purposes. The Board's decision is also in substance contrary to *Matchette v. Helvering*, 81 F. 2d, 73 (C. C. A. 2), where we held that a stockholder who made an outright assignment of a dividend to another after declaration but before time of payment was not obliged to include the dividend in his income. We are of opinion that those
48 decisions were sound and that the Board's decision cannot stand.

When the petitioner detached the coupons and handed them over to his son as a gift, the son acquired full title and dominion. The petitioner could not interfere in any way with the donee's control and right to receive the money when the coupons matured. Taxwise, the transaction was an outright assignment of future income from property, with the assignee the owner of the income prior to and at its realization. Generally liability to income tax attaches to ownership of the income, *Blair v. Commissioner*, 300 U. S. 5, and we see nothing to take the case out of the general rule. The case is not one where the assignor had power over the income after the assignment, as in *Corliss v. Bowers*, 281 U. S. 376. Nor is it a case of assignment of future earnings, the effectiveness of which for practical purposes is dependent on continued performance of services by the assignor. See *Lowery v. Helvering*, 70 F. 2d, 713 (C. C. A. 2); *Rossmore v. Commissioner*, 76 F. 2d, 520 (C. C. A. 2); *Shanley v. Bowers*, 81 F. 2d, 13 (C. C. A. 2); *Matchette v. Helvering*, supra.

The Board thought that a person who assigns future income from property and retains the property producing the income is liable for income tax on the income belonging to the transferee. The proposition, stated as broadly as this, cannot be supported. Take a case where the owner of income-producing property, such as bonds or stocks, grants by formal instrument a life estate in the property to another, keeping no power of revocation or control during the life estate but reserving the reversionary interest. The life estate is essentially a transfer of future income for the grantee's life; the corpus stays with the grantor. It would hardly be contended that in such a case the grantor was liable for income tax on the income belonging to the life tenant unconditionally. The situation may
49 be varied by supposing that the estate created was one for years rather than for life, without affecting the result. See *United States v. First National Bank*, 74 F. 2d, 360 (C. C. A. 5).

The respondent relies on *Lucas v. Earl*, 281 U. S. 111, and *Burnet v. Leininger*, 285 U. S. 136. We do not see that these cases support the Board's decision. In *Lucas v. Earl*, a husband assigned to his wife salaries and fees to be earned in the future. The salaries and fees later earned by him were held to be taxable income to him. In *Burnet v. Leininger*, a partner assigned to his wife future income from the partnership. The partner was nevertheless held liable for

income tax on such income. It is true that these two cases were given a broad interpretation in *Reinecke v. Smith*, 289 U. S. 172, 177; but in a more recent case, *Blair v. Commissioner*, *supra*, it was pointed out that they concerned assignments of future income from earnings, that they were decided on the provisions of the revenue act applicable to income derived from personal services and from partnerships, and that they did not control assignments of future income from property.

The Board quotes a passage from *Bing v. Bowers*, 22 F. 2d, 450, affirmed on the opinion below in 26 F. 2d, 1017 (C. C. A. 2). The language quoted must be read against the facts of that case, where it was held that the taxpayer had given up no interest in the land, had created no rent charge, and had in fact retained control over the net income which he had purported to grant to another.

The amounts collected on the coupons were not income of the petitioner. The decision of the Board will be reversed.

50 In United States Circuit Court of Appeals, Second
Circuit

PAUL R. G. HORST, PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Appeal From the United States Board of Tax Appeals

Judgment

Filed Dec. 2, 1939

*This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is reversed.

It is further ordered that a Mandate issue to the said Board in accordance with this decree.

D. E. ROBERTS, *Clerk.*

51 [File endorsement omitted.]

52 [Clerk's certificate to foregoing transcript omitted in printing.]

Supreme Court of the United States

Order allowing certiorari

Filed April 8, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 44190. U. S. Circuit Court of Appeals, Second Circuit. Term No. 27. Guy T. Helvering, Commissioner of Internal Revenue, Petitioner, vs. Paul R. G. Horst. Petition for a writ of certiorari and exhibit thereto. Filed March 2, 1940. Term No. 27 O. T. 1940.